



As a result of the requested change to the salary ranges indicated on the announcement, Agency Services initiated a classification review Stallone's provisional position as Electrical Subcode Official. In its November 2, 2018 determination, Agency Service found that Stallone's position was properly classified as Electrical Subcode Official. However, it also determined that while the preponderance of the duties of the position are appropriately classified by Electrical Subcode Official, the position is also assigned out-of-title duties consistent with the Assistant Construction Official title. Specifically, in accordance with *N.J.A.C. 4A:3-3.9(d)1(ii)*, Agency Services found that Stallone's duties which require the signature of a licensed Construction Official, are to be removed or reassigned.

On appeal, the appointing authority argues that the Department of Community Affairs (DCA) requires that an "acting" Construction Official be designated for those occasions when the actual Construction Official is not present. In that respect, on January 1, 2018, to address a deficit in the Construction Office when the Construction Official was unavailable, it "internally promoted" Stallone to Assistant Construction Official and increased his salary. The appointing authority stresses that Stallone does not regularly and routinely perform duties of an Assistant Construction Official. Rather, he only performs those duties in the absence of the Construction Official. Stallone steps in and signs or reviews documents when the Construction Official is unavailable, but the primary focus of his duties and the largest percentage of his time by a wide margin are the duties of an Electrical Subcode Official. Additionally, Ewing notes that it has no need for a full-time Assistant Construction Official. It states that the employee is compensated at the higher rate of pay, as per union contract rules.

Given that Ewing must make provision for those times when its construction official is unavailable under DCA requirements, it requested a stay to maintain the *status quo* while the appeal is pending, and it argues that it meets the four factors for injunctive relief set forth in *N.J.A.C. 4A:2-1.2*.

## CONCLUSION

The following factors are provided by *N.J.A.C. 4A:2 1.2(c)* in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

Initially, given that provisions must be made for those times when a construction official is unavailable, a stay of Agency Services' determination

pending the outcome of this appeal before the Civil Service Commission is appropriate.

Based upon a review of the information presented in the record, Stallone's position is properly classified as Electrical Subcode Official, and this is uncontested by the appointing authority. The issue under consideration is the performance of Construction Official tasks in the absence of the Construction Official.

Stallone indicated that he performed Construction Official tasks for 20% of his time, and his supervisor concurred. For at least another 8% of the time, he performed Construction Official related duties such as reviewing all inspection reports and preparing recommendations for temporary and final certificates of occupancy, developing street opening permit applications, and overseeing code enforcement staff of property maintenance and housing. Construction Official related duties may be interspersed with the other duties as well. Nevertheless, the appointing authority asserts that these duties are performed in the intermittent absence of the Construction Official while that employee is in paid time off status. There is nothing in the record which would indicate that this is not the case, although assignments performed almost 30% of the time is not incidental. However, the Electrical Subcode Official job specification does not permit incumbents to perform the duties of a Construction Official on an intermittent or as needed basis. Therefore, Agency Services correctly determined that any Construction Official duties assigned to an incumbent in the Electrical Subcode Official title should be removed.

However, the State Classification Plan contemplates the situation faced by Ewing as it provides for local use the title Assistant Construction Official. The definition portion of the job specification for Assistant Construction Official states:

Assists the Construction Official in overall administrative responsibility for administering and enforcing provisions of the New Jersey Uniform Construction Code; does other related duties as required.

Additionally, in the Examples of Work section of the job specification, it indicates that an incumbent:

May act as subcode official for any subcode in which qualified to act as a subcode official.

In making classification determinations, emphasis is placed on the definition section to distinguish one class of positions from another. The definition portion of a job specification is a brief statement of the kind and level of work being performed

in a title series and is relied on to distinguish one class from another. On the other hand, the Examples of Work portion of a job description provides typical work assignments which are descriptive and illustrative and are not meant to be restrictive or inclusive. *See In the Matter of Darlene M. O'Connell* (Commissioner of Personnel, decided April 10, 1992). While emphasis is generally placed on the definition portion of a job specification, a review of the title history for Assistant Construction Official demonstrates that one of the significant distinguishing characteristics of the title is its intended use in different jurisdictions. Specifically, the distinguishing characteristics indicate that in some jurisdictions, the position of Assistant Construction Official may be primarily administrative and supervisory. *In other jurisdictions the position may also entail serving as the subcode official for which he/she is qualified.* Stallone's position in Ewing is clearly the latter.

Although Ewing states that it does not need a full-time Assistant Construction Official, as indicated above, one of the distinguishing characteristics of this title is that in some jurisdictions, is not necessarily primarily administrative and supervisory, but entails serving as the subcode official for which he/she is qualified. Indeed, as Ewing indicated in its submissions, its website also lists Stallone as the "Assistant Construction Official to reflect his availability in the absence of the Construction Official to perform those duties." Moreover, the organizational chart it provided lists Stallone as the Assistant Construction Official. Thus, given that the position is not primarily administrative and supervisory in nature, that it acts in the absence of the Construction Official, and that it entails serving as the Electrical Subcode Official, it could be properly classified as Assistant Construction Official. Accordingly, Ewing should either remove the out-of-title Assistant Construction Official duties and actions which require the signature of a licensed Construction Official to properly maintain his current permanent classification as Electrical Subcode Official or provisionally appoint, pending promotional examination procedures, Stallone to the title of Assistant Construction Official. Ewing is directed to effectuate either of these actions within 60 days of the issuance date on this decision.

### **ORDER**

Therefore, it is ordered that Ewing should either remove Michael Stallone's out-of-title Assistant Construction Official duties and actions which require the signature of a licensed Construction Official to properly maintain his current permanent classification as Electrical Subcode Official or provisionally appoint, pending promotional examination procedures, Stallone to the title of Assistant Construction Official.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 15<sup>TH</sup> DAY OF APRIL, 2020

*Deirdre' L. Webster Cobb*

---

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P. O. Box 312  
Trenton, New Jersey 08625-0312

c: Michael Stallone  
Maeve Cannon, Esq.  
Kelly Glenn  
Records Center